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PROGRAMME OF WORK OF THE STANDING COMMITTEE ON DEVELOPING SERVICES SECTORS: FOSTERING COMPETITIVE SERVICES SECTORS IN DEVELOPING COUNTRIES

Item 3 (h)

TEMPORARY MOVEMENT OF PERSONS AS SERVICE PROVIDERS

Note by the UNCTAD secretariat

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INTRODUCTION

1. Over the past two decades many developing countries have been able to generate an export capacity and compete at the international level in trade in goods on account of their lower wage costs combined with acquisition of increasingly higher levels of technology, an accomplishment which has been facilitated through the GATT system of unconditional most-favoured-nation treatment combined with the implementation of the Generalized System of Preferences. The question arises as to whether they can effectively capitalize on their comparative advantage to a similar extent in trade in services. While most developing countries possess a comparative advantage in the supply of unskilled and certain kinds of skilled labour, to the extent that trade in services involves the physical cross-border movement of persons, they find it difficult to translate this into exports, because of the restrictions imposed by immigration laws on the temporary movement of personnel. The growth prospects of developing-country firms have thus been affected in a number of services sectors, where trade is highly dependent upon cross-border mobility of labour.

2. This report has been prepared in accordance with the terms of reference of the Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries and with reference to the work programme which was agreed upon at the meeting held in October 1992, in particular item 3 (h) of the work programme, that is, to identify and analyse the possibilities for developing-country service exports through temporary movement of persons as services suppliers, be it as sole service providers or as personnel; and analyse the measures affecting their ability to export such services due to barriers to the temporary movement of persons across national frontiers to supply services.

3. In order to initiate the work of the Standing Committee regarding this item, this report intends to describe the "problematique" of trade in services affected through the temporary movement of natural persons. It addresses such aspects as (a) the importance of the temporary movement of persons to trade in services of developing countries, (b) the sectors where temporary movement of persons is important for developing-country exports, (c) the general characteristics of immigration laws pertaining to the temporary movement of service suppliers, including the identification of sectors and occupations which tend to benefit from more favourable treatment, and (d) international, regional and subregional, and bilateral agreements on movement of persons.

4. The terms "international movement of persons as service suppliers" is used in the context that has emerged in the Uruguay Round negotiations, i.e., it refers to the temporary relocation of services providers and excludes permanent migration. Such movement of persons constitutes a "mode of delivery" or "mode of supply" for other services. The draft General Agreement on Trade in Services (GATS) defines "trade in services" to include all four "modes of delivery", namely cross-border movement, movement of consumer, commercial presence, and movement of natural persons as suppliers of services. The Annex on Movement of Natural Persons clarifies that the movement of natural persons as a mode of delivery involves both service providers of a party and natural persons of a party who are employed by a service provider of a party, while excluding individual job seekers and candidates for permanent residence or citizenship. It recognizes that the conditions of access for the temporary entry of persons supplying services is a legitimate subject for trade negotiations, and many participants have offered to "bind" such access by including commitments in this area in the Schedules of Commitments, as an integral part of the GATS.

I. TEMPORARY MOVEMENT OF PERSONS

A. Labour Exports

5. The movement of services suppliers falls into two basic categories which receive different treatment in the various immigration laws, as well as in the statistics on trade in services found in the IMF balance-of-payments statistics.

6. The first category involves the traditional type of labour exports, where persons reside, work and are paid abroad, but remit earnings which can be measured in the balance-of-payments statistics. Other than services incorporated in goods, developing countries have traditionally capitalised on their labour-cost advantage in the provision of services through the physical movement of persons across national frontiers. The most prevalent mechanism has been through "guest worker" type programmes controlled by the importing country and geared to its labour market situation. In this scenario, the labour-short importing country establishes legislation typically involving bilateral agreements, whereby "guest workers" from a labour-rich country can be hired by employers of the importing country. The two sets of programmes that have generated the largest waves of temporary guest workers have been those introduced by the Western European countries during the 1950s, 1960s, and 1970s and, in the 1970s and 1980s, the programmes of the Gulf Cooperation Council (GCC) countries and several Arab oil-exporting countries. The peak occurred in the 1970s, when guest workers in Western Europe amounted to several million, mainly from Mediterranean countries. One estimate placed the number of non-nationals working and living in the GCC countries, for the most part on a "guest worker" basis, at over seven million in 1988[1]. This figure includes many from other Arab countries, as well as from South and South-East Asia.

7. The second category of services suppliers comprises the movement of persons across national frontiers for shorter periods to carry out specific tasks. The tasks carried out by such persons abroad are usually components of an overall "service package", and payment is generally made to a firm in a foreign country but not necessarily the one from which the persons originate. Such "exports" are not identified as labour payments in the balance-of-payments statistics. The persons moving abroad may provide a wide range of services at different levels of skills, such as computer software consultants (or consultants in various fields), technicians for the maintenance of exported goods, professionals such as doctors, engineers, architects, etc. Many of these particularly managerial personnel move within the framework of transnational corporations to support the activities of the corporations in various countries. As indicated below, some of these persons enter foreign countries under business visitor-type provisions of immigration laws, although many simply declare themselves as "tourists".

8. In the conduct of trade in services, both categories of persons can be involved in the same "service export". For example, some labour-exporting countries have devised a parallel model to the "guest worker approach" organized by firms in the importing country, in the form of the structured export of labour services, in which exporting firms identify export opportunities and devise strategies to penetrate markets by bringing the management, know-how and personnel they need to provide their service in the importing country. In this scenario, the personnel who relocate to the importing country remain employed by a firm from the exporting country, but may also include self-employed service providers based in the exporting country or who enter into contractual employment relationships with firms in the exporting, importing or third country to carry out specific assignments.

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[1] J.S. Birk and C.A. Sinclair, "Manpower and population evaluation in the GCC and the Libyan Arab Jamahariya", Working Paper No. 42, World Employment Programme Research (Geneva, International Labour Office, October 1989).

9. While such organized exports of labour-intensive services have existed for many years (for example, ship owners have long rented the services of their vessels and crews to firms other than those of their country of origin), such exports have begun to constitute significant trade flows only recently. The construction boom in the Gulf countries during the 1970s and 1980s gave a formidable impetus to the export of construction services, not only by firms which brought the project management know-how or engineering expertise but also the construction teams (sometimes recruited from third countries) necessary to build the projects. Construction firms from the Republic of Korea, Egypt, Morocco, Lebanon, Yugoslavia, India, China and other developing countries entered these new exports markets during those years.[2] Firms from India and the Republic of Korea now export engineering and management consulting services throughout Asia and to developed countries, while Mexican firms export engineering and construction services to all parts of Latin America and now even to some areas of the United States.[3] More recently (during the 1980s) a number of countries have adopted similar approaches for exploiting labour-intensive services incorporating new technologies which reduce the need for the movement of persons. For example, India, the Republic of Korea and the Philippines have been successful in penetrating world markets for computer software and data-processing services, including those of advanced countries such as the United States or Japan.[4]

10. Much anecdotal evidence exists to indicate that considerable growth is taking place in "offshore back-office services" (i.e., data entry, data processing, software, etc.) being conducted in developing countries with input and output being transmitted electronically to and from developed-country markets. This is part of a strategy of developed-country firms (e.g., airlines) to carry out their most labour-intensive supporting service activities in low-wage countries, i.e., to benefit from low-cost labour without the problem of work permits and other difficulties associated with the international movement of persons. On the other hand, the few studies that have addressed this phenomenon indicate that while developing country firms are benefiting from this type of trade, their prospects are seriously reduced if movement of persons is restricted, as it is in many sectors, which could be termed "labour-intensive high tech", e.g., customized software, machinery maintenance, etc. It is necessary for the technical staff to visit the premises of the client.[5] It is

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[2] See for example, A. B. Zalhan, Acquiring Technological Capacity: A Study of Arab Consulting and Contracting Firms (London, Macmillan, 1991).

[3] ICA, one of Mexico's largest construction firms, has built projects thorughout Latin America (including subways in several countries) and accumulated well over $100 million worth of contracts in Florida after barely two years of operating in that state (ICA, Annual Report, 1990).

[4] In 1988-1989, India's computer software exports were estimated at well over US$ 100 million. Tata Consultancy Services, India's second largest software producer and the country's largest software exporter, employed over 500 software engineers and programmers overseas, primarily in the United States, and another 200 individuals building software in one of India's booming export processing zones. In 1988, over 800 Filipino software professionals were employed overseas as temporary workers. In addition, the country's software industry was steadily building an export base, primarily in the data-entry and software-conversion business, with its main clients in the United States, Japan, Australia and Western Europe. (Thierry Noyelle, "Computer software and computer services in five Asian countries", in UNCTAD, *Services in Asia and the Pacific: Selected Papers*, vol. One (UNCTAD/ITP/51).

[5] See Saurabh Srivastava, "Computer Software and Data Processing: Export Potential" in Services and Development Potential, the Indian Context (UNCTAD/ITP/22) and Thierry Noyelle, "Computer software and computer services in five Asian countries", in Services in Asia and the Pacific: Selected Papers, vol. One (UNCTAD/ITP/51).

also necessary to be present in the most sophisticated markets to become competitive at the "upper-end" of the market. Otherwise developing country firms will be relegated to sub-contractors, competing for a limited share of the market.

B. Economic Impact of the Movement of Labour

11. Many developing countries rely heavily on the cross-border movement of persons. For some developing countries, in particular for many of the least-developed ones, the earnings of their nationals abroad constitute their only exports of services, and in a few cases, their sole source of foreign exchange. For these countries, remittances, defined as the portion of migrant workers' earnings sent back from the country of employment to the country of origin, constitute significant proportions of GDP, exports, and imports, providing an attractive means of foreign exchange earnings and economic development opportunity.[6] The International Monetary Fund's (IMF's) Balance of Payments Statistics Yearbook, which compiles data from individual country sources, estimates that nominal global remittances for developing countries amounted in 1991 to US$93 billion compared to US$43.3 billion in 1980. The global volume of remittances "reflects the fact that international migration has become central to international trade in services".[7] In 1991, remittances were roughly 10.7 percent of what has become the very substantial total value of world trade in services for that year - US$ 862.1 billion (as calculated by the IMF).

12. Estimates of official remittances have serious inadequacies. Data are not reported for all countries. Countries record and report remittances in different categories of the balance-of-payments statistics, and reporting requirements or conventions differ among countries. Three categories in the balance-of-payments detailed current account statistics are of relevance: "workers remittances", "migrant transfers", and "labour income". "Worker remittances" are the value of transfers from workers abroad for more than one year; "migrant transfers" include the flow of goods and financial assets associated with migration; and "labour income" comes from migrants working abroad for less than one year.

13. An important consideration relating to the economic impact of the movement of labour across borders is that, although many countries keep records of the occupations of their nationals working abroad, statistics are difficult to compare at the international level. It is also important to recognize that these "trade flows" are calculated from payments made by nationals present (or resident) in foreign countries; they do not indicate the full importance of the movement of persons as a mode of supply of services in that many services provided by persons on a temporary basis in a foreign country are reflected in payments to a firm for services rendered, when this firm may be present in the market country. In many cases, the movement of persons is only one component of the final service package.

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[6] See UNCTAD VIII: Analytical report by the UNCTAD secretariat to the Conference (TD/358).

[7] Russel, Sharon Stanton, "Remittances from International Migration: A Review in Perspective." World Development, 14 (6): 677-696.

Table 1

Labour Services Net Earnings and Merchandise Exports for Labour Services Exporting Countries, 1991

COUNTRY	Labour-service Net earnings	Merchandise Exports	Labour earnings as per cent of merchandise exports
LATIN AMERICA			
Argentina	29	11972	0.2
Bolivia	23	760	3.0
Brazil	813	31408	2.5
Chile	40	8929	0.4
Colombia	1717	7572	22.6
El Salvador	470	588	0.8
Mexico	2055	27121	7.5
AFRICA			
Algeria	332	12964	2.5
Egypt	4054	3856	105.1
Morocco	2012	4277	47.0
Tunisia	578	4021	14.3
Benin	71	297	23.9
Ghana (1990)	202	891	22.6
Mali	70	354	19.7
Senegal	28	903	3.1
ASIA			
Bangladesh	236	1689	13.9
India (1990)	2209	13510	16.4
Pakistan	1797	6352	28.2
Sri Lanka	395	1990	19.8
Philippines	473	8840	5.3
Turkey	2854	13672	20.8
China (1990)	274	51519	0.5
Jordan	1124	1129	99.5

Source: International Monetary Fund, Balance-of-Payments Statistics Yearbook, 1991 and 1992, and data from the Chinese Ministry of Foreign Economic Relations and Trade.

Note: Labour service balance includes labour income, migrant transfers and workers' remittances.

1. Africa

14. The last two decades have witnessed a growing movement of persons within and from Africa. Consequently, income inflows resulting from the activities of Africans working abroad have become significant when compared to both the exports of services and the GDP of a large number of African countries (e.g., Egypt, Morocco, Tunisia, Burkina Faso, Central African Republic, Congo, Gabon, Senegal, Tanzania, Botswana, Mozambique, Sudan, Cape Verde, and Lesotho).[8]

15. In terms of country of origin, African organized movement of personnel originates principally from the countries of Southern Africa - especially Botswana, Lesotho, Mozambique, and Swaziland - and from Northern Africa, especially Egypt. Egypt's experience with large-scale export of labour services

[8] See UNCTAD VIII: Analytical Report, op. cit.

goes back to the early 1970s, although there is an Egyptian tradition of overseas temporary or permanent migration going back to the 1920s, if not earlier. In 1987, the Central Agency for Public Mobilization and Statistics (CAPMAS) counted nearly 2 million Egyptians overseas, of which 92 per cent were employed, the residual including nonworking dependents.[9] There are organized flows originating from other parts of Africa, especially West Africa, but their importance is much less when compared to the role of individual migration movement in that region.

16. In terms of country destinations, the main recipients of African organized movement of persons are the Republic of South Africa, the Gulf Cooperation Council countries, other Middle Eastern countries and the Libyan Arab Jamahiriya. Other African countries are recipents on a smaller scale.

2. Asia and the Pacific

17. The Asia and Pacific region is dominated by net-exporting countries. Currently, there are eight major labour-exporting countries in Asia: India, Pakistan, Bangladesh, Sri Lanka, Indonesia, Republic of Korea, the Philippines, and Thailand. The number of contract migrant workers sent by India, Pakistan, South Korea and the Philippines exceeded 100,000 in 1979; in 1982, the number from the Philippines was 434,200, exceeding that for the other seven countries.

18. Over the past ten years, Asian workers have dominated the Middle-East market, which remains the main destination for Asian workers, although there are alternative destinations in developed countries. Intraregional labour movement takes place between countries experiencing differential rates of economic growth, per capita incomes and employment opportunities. In the 1980s, workers from some labour-rich Asian countries were able to work in a number of other Asian countries and territories that had become labour importers, such as Japan, Hong Kong, Macao, Singapore, Taiwan province of China, Malaysia, and the Republic of Korea.[10]

19. ASEAN countries include both net labour importers (Brunei and Singapore) and net labour exporters (Malaysia, Indonesia, the Philippines, and Thailand). Most temporary migrants from ASEAN have been employed in the Middle East. There has also been some increase in the export of temporary labour to developed countries, particularly Japan.[11]

20. Malaysia is both an exporter and an importer of labour-intensive services, issuing employment passes to approved foreign managerial, professional, supervisory, technical and skilled workers. The Philippines have long been a major supplier of labour to foreign countries. In 1981, about a quarter of a million Filipino contract workers went abroad, mostly in the Middle East. Remittances by Filipino workers abroad in 1980 were around US$ 815 million, equivalent to 14 per cent of commodity exports. Rapid industrialization since the late 1960s has made Singapore increasingly dependent on foreign labour, both skilled and unskilled. In 1988, there were an estimated 157,000 foreigners in Singapore's workforce. Thailand, historically not a major exporter of labour-intensive services, began encouraging labour exports in the 1970s. It subsequently developed into a large exporter of labour to the Gulf Countries,

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[9] See CAPMAS, 1987 Survey of Egyptians Living Overseas (Cairo: CAPMAS, 1987).

[10] See Zhang Ningxiang, Chu Changyou, and Xu Dansong, "Labor Service Exports from China: Present Situation and Future Potential" (1992), and Reginald T. Appleyard, "International Migration: Challenge for the Nineties", International Organization for Migration, Geneva, 1991.

[11] See Pang Eng Fong and Linda Low, "Labour mobility, trade in services and the Uruguay Round: the perspective of ASEAN countries", in UNCTAD, Services in Asia and the Pacific, vol. One (UNCTAD/ITP/51).

from less than 4,000 migrants workers in 1975 to over 40,000 in the early 1980s. Remittances have increased from about US$55 million a year in the early 1980s to around US$1 billion in the late 1980s.[12]

21. Pakistan and India provided 27 per cent and Bangladesh and Sri Lanka 22 per cent of the estimated 795,000 workers in the Middle East in 1989. In that context, the economic impact of such exports of labour services has been considerable, especially through remittances, notably in Pakistan and Bangladesh (representing 35 per cent and 47 percent respectively of their total export earnings in 1988), while India and Sri Lanka also registered substantial external revenues.[13]

22. Some Pacific Island countries export skilled and unskilled manpower to neighbouring countries as well as providing crews for shipping lines. Fiji, Tonga, Western Samoa, Kiribati, Tuvalu and Vanuatu have sizable numbers of their nationals working abroad and remitting foreign exchange earnings. Earnings from overseas employment are substantial for these countries. It is estimated that remittances from overseas employment in Tonga is about three times the value of the country's merchandise exports, while in Western Samoa, it is about twice the merchandise export figure. For Kiribati and Vanuatu, the proceeds from overseas employment amount to about 40 per cent and 20 per cent of their merchandise exports, respectively.[14]

3. China

23. Compared with other labour-exporting developing countries, especially the Asian countries mentioned above, China exports fewer personnel, earns less labour income, and holds a smaller share of the international labour service market.[15] China's income from labour exports is also lower than that for other Asian labour-exporting countries, both in amount and as a share of merchandise export income. China, with a population of over 1 billion, currently earns only the equivalent of 0.5 per cent of its merchandise exports income from labour exports. Nevertheless, China's provision of labour-intensive services has gradually increased as a result of the country's policy of opening up to the outside world.

24. In 1979, four corporations were established to engage specifically in labour service exports. Chinese labour services are exported through China's international economic and technical cooperation companies, according to the contracts or agreements signed with foreign governments, enterprises, and individuals. There are 123 international companies approved by the State Council or the Ministry of Foreign Economic Relations and Trade. These companies are legal entities established to engage in international construction and labour service projects.

25. The development of Chinese labour service exports can be divided into three major phases: (a) During the first phase, from 1979 to 1984, the number of personnel working abroad increased from 2,000 to 50,000. The amount of labour service contracts signed by all companies increased from US$17.6 million in 1979 to US$199 million in 1984; (b) During the second phase, from 1985 to 1990, Chinese labour service exports increased very slowly. In 1990, about 58,000 workers went abroad and contracts reached US$478 million; (c) During the third phase, which began in 1991, Chinese overseas workers numbered over 89,000, and labour service contracts increased to US$1 billion. Hong Kong, Macao, Japan,

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[12] Ibid.

[13] Appleyard, op. cit.

[14] See Yee Che Fong, "Trade in Services in the Pacific Island Countries" in UNCATD, Services in Asia and the Pacific, vol. One (UNCTAD/ITP/51).

[15] This section is based on information contained in Zhang Ningxiang, Chu Changyou, and Xu Dansong, op. cit.

Singapore, Russia, and the United States became the major markets for Chinese labour service exports, and in 1991 accounted for 61 per cent of total personnel working abroad. By the end of 1991, over 24,000 construction and labour service contracts had been signed with 157 countries and regions in Asia, Africa, Europe, North America, Latin America, and Oceania. Of the total contract value of US$19 billion signed up to that point, US$12 billion worth of projects had been completed.

26. Asia is the primary market for Chinese labour service exports, and accounted for 71 per cent of the total personnel working abroad from 1982 to 1991. Africa is the second largest market for Chinese labour service exports, accounting for 15 per cent of all such workers (Libyan Arab Jamahiriya, Algeria, Egypt, and Botswana being the major markets). Over two-thirds of Chinese personnel sent to Africa worked on construction projects. Europe is the third largest market for Chinese labour service exports, with 5.5 per cent of all workers and contracts accounting for about 12.8 per cent of total contracts. North America, the fourth largest, was responsible for 4.2 per cent of the total. United States labour service contracts in 1991 were 9.8 per cent of all contracts. Latin America and Oceania represented much smaller markets.

4. Latin America and the Caribbean

27. Estimates are that some ten million persons from Latin America and the Caribbean reside outside the region. Nevertheless, the share of labour services exports in the total exports from Latin American countries has been lower than for African and Asian countries, ranging from 1 to 7 per cent in 1988, while in the Caribbean countries it has been higher.

28. The dominant trends in Latin America and the Caribbean are: (1) a significant emigration of professionals from Latin America to the developed countries, and particularly to the United States. Between 1961 and 1983, some 700,000 professionals and other highly-qualified personnel emigrated to the United States, Canada and the United Kingdom;[16] (2) the intraregional movement taking place in Latin America among countries experiencing different rates of economic growth, per-capita income and employment opportunities. For example, Argentina, Venezuela and Brazil have been the main receivers of migrants from nearby countries. Such movement of persons within Latin American region generally involves persons with lower skill levels, mainly taking place between neighbouring countries, e.g., from Colombia to Venezuela; from Bolivia, Paraguay and Chile to Argentina.[17]

5. The Middle East

29. In the Middle East, external labour income has been very significant for many countries, exceeding the revenues from the total export of merchandise. Millions of contract workers moved to petroleum-producing countries after 1973. In 1975, 35 per cent of the migrant labour in the Gulf Cooperation Council (GCC) States (Saudi Arabia, Oman, Kuwait, Bahrain, UAE and Qatar) were employed in construction services and 29 per cent in other service sectors.

30. The importance of Asia as a source of labour increased after 1975, when an estimated 360,000 workers represented 20 per cent of the region's non-national workforce. By 1985, there were about 3.5 million. In 1975, India and Pakistan accounted for 95 per cent of Asian workers in the Middle East; by 1989 their share was probably less than 25 per cent, South East and East Asia having become

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[16] Norberto Fernandez Lamarra, "Human Resources, Development and Migration of Professionals in Latin America", paper delivered at the tenth IOM seminar on migration, 15-17 September 1992, Geneva.

[17] Appleyard, op. cit.

the main region of supply.[18] The composition of foreign workers in the Gulf areas may have substantially altered after the 1991-1992 Gulf war.

C. Services Provided by "Natural Persons"

31. Data available from the few countries which keep track of the occupations of people working abroad suggest that the competitive advantage of developing countries in trade in labour-intensive services is also the result of the growing capacity of a number of them to provide skilled and highly-skilled labour to export markets. This information identifies what might be considered as the "revealed comparative advantage" in certain labour-intensive services.

32. Among African countries, Egypt maintains a competitive advantage in its ability to provide skilled labour to labour-importing countries. The large majority of Egyptians working overseas tend to be employed either in the managerial, professional or technical category, as production or agricultural workers.[19] The educational and occupational composition of the Egyptian migrant worker was generally considered higher than the national average.

Table 2

Occupational Distribution of Egyptians Living Overseas

Occupation	Percentage Distribution
Managerial, Professional, Technical	26.5
Administrators, Directors	0.5
Clerical	7.1
Sales	3.1
Service workers	3.2
Agricultural workers	30.2
Unskilled and Skilled Production Workers and Transport Operators	27.3
Other	2.0
Total	100.0

Source: Central Agency of Public Mobilization and Statistics, Survey of Egyptian Migration (Cairo, CAPMAS, 1987).

33. Estimates are also available for ASEAN countries. About a third of the Filipinos employed abroad in the late 1980s were production workers, another quarter were engaged in professional, technical and related work, with roughly the same proportion working in service occupations, mostly as domestics. Most Indonesian migrant workers are currently found in domestic services, shipping and agriculture. Malaysia is a major exporter of skilled and unskilled labour, especially to Singapore.

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[18] Ibid.

[19] CAPMAS, op. cit.

Table 3

Deployed Indonesian Migrant Workers by Occupation, 1983-89

Occupation	1983	1984	1985	1986	1987	1988	1989
Agriculture	2867	3133	3592	19229	5671	2135	36627
Mining	-	-	2	-	-	4	6
Industry	-	-	3	-	2	2	7
Electricity	-	361	195	-	2	36	594
Construction	312	1313	1396	342	154	216	3733
Tourism and travel	326	602	137	475	49	78	1667
Construction services	318	514	844	470	62	307	2515
Domestic services	12630	21638	42224	36808	43108	50001	206409
Other	-	-	-	1	-	-	1
Total	28957	37857	65544	65544	59362	59362	312414

Source: Department of Manpower, Jakarta, Republic of Indonesia

Table 4

Occupational Distribution of Filipino Migrant Workers, 1975-1987

Occupation	1975	1977	1979	1981	1983	1985	1987
Prof/Tech	4670	2650	9584	12347	39814	57617	112236
Entertainment	1925	2057	8380	14333	13117	18342	37888
Manag./Administr.	71	210	1441	1804	1870	1202	1675
Clerical	225	944	2896	2585	14189	15141	15929
Sales	53	30	265	446	2259	2780	4268
Service	2747	4576	14089	33109	58151	91381	106654
Agriculture	118	123	186	1322	1641	1217	2690
Prod	2602	26086	55678	144970	249222	150074	144541
Total land	12501	36676	92519	210936	380263	337754	425881
Total sea	23534	33699	44818	55307	53944	51446	70973
Total	36035	70375	137337	266243	434207	389200	496854
Deployed Filipino Contract workers:							
Total land						320494	382229
Total sea						52290	67042
Total						372784	449271

Source: Philippines Overseas Employment Administration

34. Studies have shown a potential for increased services exports from ASEAN countries through the temporary movement of persons.[20] The four larger ASEAN countries have demonstrated a competitive edge in the export of construction services requiring large numbers of unskilled workers. Singapore has acquired a capacity to export construction and design services as well as telecommunications that require skilled labour as a mode of delivery. Transportation is another area in which many ASEAN countries already have a competitive edge, particularly in air-transport services. There is also

[20] Pang Eng Fong and Linda Low, op. cit. This is based on estimates by the authors of the potential for the export of skilled and unskilled labour from ASEAN countries to developed countries in the 1990s in six sectors included in the Group of Negotiations on Services in the context of the Uruguay Round negotiations.

telecommunications that require skilled labour as a mode of delivery. Transportation is another area in which many ASEAN countries already have a competitive edge, particularly in air-transport services. There is also potential for ASEAN exports of tourism services that require labour mobility as a mode of delivery. Three countries - Malaysia, the Philippines and Singapore - have the skilled manpower to deliver financial services in developed countries. In professional services, a sector where the movement of persons in many instances is the only mode of delivery, there are good prospects for ASEAN exports to developed countries.

35. For some Latin American countries, e.g. Argentina, Brazil and Venezuela, a large proportion - up to 25-50 per cent - of nationals working abroad are in professional categories such as nurses, midwives, doctors, dentists, lawyers, artists, mathematicians and statisticians.[21]

36. Although the majority of Chinese overseas workers are in relatively low-skilled jobs, they also include professional technicians such as computer software technicians and medical personnel. From 1982 to 1991, over 40 per cent of total labour exports contracts concerned construction projects, while personnel working overseas on labour service projects accounted for 58 per cent of all contracts. Among the personnel working on overseas construction projects are engineering designers, construction workers, projects managers, and testing and training technicians; labour service cooperation projects involve cooks, sailors, agricultural workers, nurses, metal sheet-shaping workers and senior special technicians, such as managers, computer software technicians, senior seamen, and doctors.[22]

II. REGIMES FOR THE TEMPORARY MOVEMENT OF PERSONS

37. The temporary movement of persons into developed countries has reached important levels. Annual flows of temporary foreign personnel (business visitors as well as temporary immigrants for work) into the economies of several developed countries in the late 1980s are illustrative of this phenomenon. The coverage of these data varies owing to the particular features of each country's statistical apparatus. Some countries keep detailed statistics, and others do not. For example, Canada does not keep an official count of visitors (either short-term business visitors or visitors for pleasure).[23]

38. Estimates of the number of business visitors (individuals who enter a country for the purpose of conducting business, typically for a short period of time) entering the three countries that keep precise records of this type of entry (United Kingdom, United States and, to a lesser extent, Australia) suggest that annual inflows are quite high: over 2.5 million from overseas (i.e., excluding Canada and Mexico) into the United States in 1989; 1.3 million (excluding the EC) into the United Kingdom in 1990; and 2 million into Australia in 1987-1988. These numbers probably underestimate the true magnitude of business visits since many individuals simply enter as tourists (on pleasure trips) without mentioning the real purpose of their visit.[24]

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[21] Norberto Fernandez Lamarra, op. cit.

[22] Zhang Ningxiang, Chu Changyou, and Xu Dansong, op. cit.

[23] See, SOPEMI, Trends in International Migration. Continuous Reporting System on Migration (Paris, OECD, 1992).

[24] See Thierry Noyelle, Katlen Blöcke, Devaki Chandra, and Beth Redfield, "Trade in labor services and temporary movement of personnel", a report to UNCTAD, 1991.

39. Estimates of the numbers of foreign persons who are allowed to reside and work temporarily in developed countries also suggests that this form of movement is quite established. Excluding those persons allowed to work and to reside temporarily because of their employment by the foreign government or an international organization, there were 44,000 temporary immigrants for an expected stay of longer than one year in Australia in 1987-1988, approximately 226,000 temporary immigrants in Canada in 1990, 334,000 temporary immigrants in Switzerland in 1989, 149,000 temporary immigrants in the United Kingdom in 1990, and 413,000 in the United States in 1989.[25]

A. General Characteristics of Regimes for "Non-immigrants"

40. The temporary entry of natural persons supplying services is restricted by two main classes of instruments: (1) visas, residency permits and work permits that regulate entry and temporary stay, and (2) licencing and certification regulations governing the right to practice. The following paragraphs examine the national regimes and international agreements dealing with the former category; the latter issue is addressed in a separate document.[26]

41. Visas and residence permits are the most important instruments used to regulate, control and monitor entry into a country for temporary or long-term immigration purposes. Laws, regulations and administrative practices limiting temporary entry range from the very detailed and highly transparent to the very obscure and highly discretionary. Still, when dealing with temporary stays for work, most countries distinguish between two sets of applicants:

- short-term visitors, often called "business visitors", who may request permission to enter a country for a very short duration (typically several days or several weeks; sometimes a few months) while remaining nongainfully employed in the host country (in other words, while not on the payroll of an organization of the host country);

- temporary working residents, who may request entry for up to several months or several years in a country for purposes of being gainfully employed in that country (in other words, while being on the payroll of an organization of the host country). Temporary working residents typically include intra-company transferees, corporate trainees, individual service contractors (a self-employed consultant, an artist, an athlete, or anyone hired in the exporting country by an organization of the importing country to fulfill a specific contract), salesperson, and investors.

42. In issuing visas and residence permits, visa-granting authorities of most countries base their decision in part on a number of issues of general concern. Such issues may include the applicant's country of origin, health, the existence of a previous criminal record, or the existence of an earlier record with the country's immigration authorities. In some countries, religion, sex or race may even be factors for decision.

43. In addition, the decision to grant a visa or residence permit is based on the purpose of the visit as outlined above. Specifically, when dealing with "business visitors", most countries tend to limit the list of those that qualify as business visitors based on the type of occupation (for example, manager, high-level professional or salesperson), or the type or skill-intensity of the activity carried out while visiting (for example, participating in a conference,

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[25] Ibid.

[26] See Note on "Processes of recognition and harmonization of qualifications" prepared by the secretariat under item 3 (i) of the Work Programme, UNCTAD/SDD/SER/2.

engaging in contract negotiations, or attending a trade fair).[27]

44. Among applicants who seek temporary entry for gainful employment, a difference is usually made between occupations for which no labour certification tests are needed (not unlikely high-level managers entering as intra-company transferees, personnel with advanced technical knowledge, or "special knowledge" personnel, salespersons and investors), and other occupations for which a labour market test is required. In both cases, issuance of a visa or residency permit is usually linked to the granting of a work permit.

45. Typically, most countries set between 90 days and six months as the upper limit for such short-term entries. In addition, the usual rule is that short-term visitors cannot collect a wage or salary from a commercial entity based in the country that they are visiting, only from an entity based in their home country. In theory, most countries grant unrestricted entry to foreign nationals for short-term business visits (other than for reasons of public health, national safety, war, or other relevant exceptions). In practice, however, many countries show a marked tendency to control more tightly short-term business entries by workers, i.e., other than seasonal personnel, either by denying them entry or by granting very short time limits for their visit. When compared to short-term visits, longer temporary business entries are characterized by the fact that the entering individual usually seeks to establish temporary residence and to collect a wage or salary from a commercial entity based in the importing country. When dealing with these longer temporary entries, most countries are more restrictive. Some countries may readily grant temporary residency to senior executives, managers and key personnel of foreign companies, while tightly controlling the entry of dependent workers - typically through labour certification tests or equivalent measures that link the issuance of visas to local labour market conditions relative to the occupation of visa applicants.

46. Work permits are generally issued on the bases of two criteria. The first one, suggested above, refers to the occupation of the applicant; the second, to the degree of competition that the host country may be willing to allow or even encourage in its labour market. Many countries allow relatively unrestricted access for managers, "special knowledge" people, sales representatives or intra-corporate senior transfer personnel. Restrictions can be based either on occupation, or on the particular industrial or service sector involved, usually taking into account the prevailing level of unemployment with regard to the particular occupation or industry. Some labour market tests are transparent - for example, the applicant receives points relating to the criteria mentioned earlier and is issued a work permit based on his or her score; others use quotas, while some use a mixture of both transparent tests and quotas. Some criteria are obscure and highly discretionary. Job specific work permits are typically issued and the job location identified in the applicant's initial request and for a limited duration (typically one or two years, with the possibility of renewal).

47. As indicated above, different countries have different approaches to "economic needs" or "labour market" tests. In Italy the work permit is granted after checking that there are no Italians or other EC nationals available with the same occupational skills as those of the applicant. In Canada, employment authorizations are issued only after it is proven that the employment of the person in Canada will not adversely affect the employment opportunities for Canadian citizens or permanent residents of Canada or the settlement of a labour dispute. In Switzerland, the general rule is that temporary permits can be issued only if the Swiss-based employers cannot find an indigenous worker able and willing to fill the vacancy under conditions customary to the place and the occupation. In Germany, work permits are issued by local employment authorities based on the state of the local labour market. Local employment authorities must

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[27] This material draws heavily from the UNCTC/World Bank publication "Liberalizing International Transactions in Services", New York, 1992.

give priority to the interests of the domestic labour force and foreign nationals considered on an equal level with Germans (or EC-member nationals), against those of other foreign applicants.

48. Labour certification (or "economic needs") test, when required, have different characteristics:

- Objective labour certification testing may be based on criteria such as competition with domestic labour as measured by the unemployment rate for the occupation and in the region where the foreigner is to be hired, or proof that the employer has made an effort to hire a local employee but failed to find one; for example, labour permits are granted on the basis of the state of the local market, and not granted if a position can be filled by a national.

- A system of quotas may be based on industry; for example, agricultural labour certification is required from the United States Department of Labor with respect to temporary or seasonal agricultural workers. The process of certification involves determining whether the employment involves agriculture, whether it is temporary or seasonal in nature, whether the beneficiary is qualified for the job, whether the job is open to United States workers and whether qualified United States workers are available, whether the employment of a qualified foreign worker might have an impact on domestic labour markets, and whether the employment conditions of the beneficiary, including housing, will meet applicable requirements. In Switzerland annual quotas are used. For a permit to be granted, the employer must furnish proof of having made reasonable efforts to find an employee in the market, that the vacancy has been reported to the Swiss labour authorities and that it has been impossible to find an available employee within an appropriate period of time in the domestic labour market. Quotas are divided between the Confederation and the various cantons.

- A special work permit is used for seasonal workers in Switzerland, and it is typically issued only to workers from traditional recruiting areas such as Portugal, Spain, Italy and Yugoslavia, and only for employment in sectors characterized by seasonal work (construction, hospitality, agriculture) or in firms from other sectors that employ seasonal workers. The Canton labour market office determines the duration of the season for each firm, which should not exceed nine months. While cantons are entitled to issue 153,750 seasonal permits per year and the confederation 10,000 permits, there is a further restriction in that the total number of seasonal workers in Switzerland at any point in time should not exceed 110,000.

- Subjective test; in this case the national authorities - Immigration or Labour - are given broad discretionary power;

- Full industry or occupational ban.

49. In general, existing facilities are usually for a certain horizontal category of persons such as business visitors, intra-corporate transferees, sales representatives (services sellers), and specialists.

(a) Business visitors:

As noted above, most countries waive labour certification tests for business visitors. Many limit the list of those that qualify as business visitors, however. Limitations are usually based on the type of occupation or activity carried out while visiting (e.g., participating in a conference, engaging in contract negotiation, etc.).

For example, Australian temporary-resident and entry visas cover 24 categories, which include executives, specialists, working holidays,

entertainment, medical practitioners, etc. The executive category is designed to facilitate the admission of senior managerial personnel into Australia to improve local business practices and encourage the introduction and transfer of new skills and technologies. It covers only senior managers responsible for a company's entire operations - or at least a substantial part - in Australia. Standard labour market testing requirements are not mandatory for this category. Instead, the sponsors may provide a written statement detailing why the position cannot be filled from the local work force and why it must be staffed from overseas.

(b) Intra-corporate transferees:

Intra-corporate transferees are employees transferred to the importing country to work for the company's local commercial representatives and who intend to establish temporary residence; they are paid in the importing country and stay for periods ranging from several months to several years. Typically, most developed countries allow certain managerial and special knowledge personnel (also called essential personnel) relatively liberal access in terms of time (up to several years), but most of these countries forbid the market access of non-essential personnel, or permit it only under highly restrictive conditions. In cases where non-essential personnel are allowed in, stringent conditions that may be highly discriminatory (by country of origin) are normally imposed to screen applicants using labour market tests (to prevent foreign employees from competing with domestic employees).

This category in the United States covers only those employees who have been employed outside the United States by the qualifying organization for one continuous year within the preceding three years and who seek employment with a branch, subsidiary or affiliate of the same employer in a managerial or executive capacity, or one that involves specialized knowledge. The new statutory definitions for managerial and executive categories stress responsibility for managing important functions of the business rather than the number of employees supervised.

(c) Service sellers:

Service sellers are persons not based in the importing country who are (sales) representatives of a service provider and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for the service providers. These representatives cannot engage in making direct sales to the general public or in supplying services themselves.

(d) Specialists:

Specialists are defined as those who have trade, technical or professional skills and who are responsible for or employed in a particular aspect of an organization's operations in an importing country. Skills are assessed in terms of applicants' employment experience, qualifications and suitability for the position. The initial residency period may be up to two years, with provision for extension provided the total stay does not exceed four years.

For employing foreign professionals performing services in specialty occupations, an employer in the United States is required to submit a labour condition application approved by the Secretary of Labor. In assessing the applications, the Department of Labor uses a complaint-driven enforcement process, comprising attestation by the employer, public examination of the labour condition application, and the ability of aggrieved persons to file complaints. Penal action can be taken against the employer based on the investigation, who may be barred from employing temporary aliens for at least one year. In order to implement the complaint-driven enforcement measures, the Department has

required that the firm must maintain a legal presence in the United States.

50. Another major condition restricting the national treatment of foreign workers is limitations on the licensing of foreign professionals. Foremost are restrictions based on citizenship and/or residency requirements.[28] Other restrictions on national treatment may include limitations on the living conditions and civil rights of foreign workers such as restricting entry of workers' dependents, limiting the opportunities for their dependents to work while overseas, placing restrictions on where foreign personnel can live, and so forth. Countries may also seek to restrict social, health, and other benefits of foreign workers, discriminating against them in the area of wages and salaries, restricting their access to training, and barring foreigners from certain occupations or positions of responsibility. Finally, the importing country may restrict overseas remittances by foreign employee on grounds of foreign exchange controls.

51. In Germany, foreign nationals who are employed on the basis of an independent contract by which a contractor undertakes to carry out a well-defined and well-specified assignment under a commercial agreement can obtain a residence permit for the duration of the work. Foreign nationals who serve foreign-based companies in Germany for less than three months and who keep their permanent residence abroad are not considered as gainfully employed in Germany under German law. Border-crossing permits are issued to foreign nationals who work within a border area and return each day to their domicile, if the applicant has been living in the neighbouring border area for longer than six months.

B. Provisions at the Occupational and Sectoral Level

52. In many countries, the immigration regulations may define situations in which an employment authorization may be issued without applying the labour certification test. Three main situations may be distinguished in this regard.

53. Immigration laws identify particular categories of professions for which temporary entry facilities are more liberal than the norms. In Germany, labour permits are not required by independent employees, transport operators who frequently cross borders, assembly and repair service personnel, artists, sports figures, students, scientists, and journalists. Business people participating in discussions or negotiations are not considered to be involved in gainful activity and also are exempt from such requirements.

54. In Spain, persons exempt from work permit requirements include academic personnel, staff of cultural institutions, accredited press correspondents, entertainers, clergy, scientists, technicians in government service, diplomatic officers, and officials of international organizations and their families.

55. The UK has a category of permit-free employment whereby the employee is registered with the Foreign Office rather than with the Department of Employment. Categories covered include the sole representatives of overseas firms which have no branch, subsidiary or other representative in the U.K; exchange teachers and language assistants; seamen committed to joining a ship; operational staff of overseas airlines, and seasonal workers in agricultural camps.

56. Labour certification testing may not be needed for some occupations with special characteristics. In Switzerland, certain persons can obtain temporary permits irrespective of existing quotas. Among these are foreigners who spend less than eight months per year in Switzerland and work as artists in certain defined fields. In Japan, professors, artists, foreign religious persons,

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[28] Note on "Processes of recognition and harmonization of qualifications" prepared by the secretariat under item 3 (i) of the Work Programme, UNCTAD/SDD/SER/2.

journalists, investors, business managers, and providers of legal or accounting services are typically granted entry for either six months, one or three years; entry for the remaining categories of visas is for either three months, six months, or one year.

57. The Immigration Control and Refugee Recognition Act of Japan provides for the issue of employment visas for 14 categories of people. They include skilled labour or specialization in various professions (e.g., foreign law, medical services, foreign accounting), intracompany transferees, entertainers and professors. There are numerous requirements that restrict the scope of visa categories, such as educational level and work experience. Foreigners are also required to demonstrate that they are receiving a salary no less than that a Japanese national would receive for the same job. In Germany, teachers of foreign languages in grade schools, professors of foreign languages in universities, and chefs that are nationals of the country in whose cuisine the employing restaurant is specialized are included in the professions that may enter because of special needs. In the United Kingdom, work permits are issued to skilled workers performing defined specialist functions as well as workers in categories subject to quotas and special conditions, such as hotel and catering workers, resident domestics and hospital auxiliaries.

58. The economies of many, if not all developed countries, are characterized by shortages in different parts of their labour markets. Thus, immigration laws and regulations also identify occupations that enter in answer to shortage or special needs. For example, in order to cope with nursing shortages the United States Immigration Nursing Relief Act of 1989 created a new visa classification (H1A) which exempted nurses from labour certification requirements. A H1A visa may be issued if health care authorities provide evidence to the Immigration and Naturalization Service that there will be a substantial disruption of service unless foreigners are admitted; that the employment of foreigners will not affect wages and working conditions; that foreigners will be paid the prevailing wage rate; that the health facility in question is striving to recruit and retain sufficient nationals or permanent residents for nursing positions; that there is no strike or lockout in effect, and that notice of the petition to employ foreigners has been presented to the bargaining representatives of registered nurses at the facility.

59. In New Zealand, residence and temporary work visas and permits may be obtained without first having to enquire whether there are any suitably qualified local people, in the case of the occupations contained in the Occupational Priority List (OPL). This list is updated at regular intervals and contains a mixture of professional, technical and trade occupations. In 1988, it included accountants, computer personnel, financial analysts, electrical and electronic engineering technicians, managers and decision-makers in activities relating to the stock market, banking, finance and marketing, as well as boat builders, cabinets makers, furniture upholsterers and offset printers. The list contains also a good number of health-sector occupations.

60. The construction crew of a foreign firm can be issued a work permit for a maximum of one year under three conditions: if the firm does not have a branch office, subsidiary or licensee in Switzerland; if the crew is required for a single construction project of a limited time; and if indigenous workers and technical equipment for the project cannot be found in the domestic labour market.

61. This study has focussed on the immigration regimes of developing countries, other than in the context of regional cooperation (see below). However, one main characteristic of such regimes is the link between investment and the movement of persons, in which foreign firms are allowed to import certain high-level employees and technicians, depending on the size of their investments. Most developing countries recognize that policies which restrict the import of skilled professionals may be self-defeating. For example, Malaysia, as noted above, has developed policies for exporting certain kinds of skilled and semi-skilled labour while importing skilled professionals.

III. INTERNATIONAL REGIMES FOR THE MOVEMENT OF SERVICES SUPPLIERS

62. While the Uruguay Round negotiations on trade in services constituted the first attempt to tackle movement of personnel as a trade issue at the multilateral level, countries have dealt with this issue in the context of free-trade agreements, customs unions, and regional and subregional agreements. However, a close look at the experience of some of these other agreements is indicative of the difficulties that most have met as they have attempted to truly liberalize the movement of personnel.[29]

A. Regional Arrangements

1. The European Community (EC)

63. Under various articles of the Treaty of Rome, the EC provides for the freedom of movement of workers and persons, freedom of establishment and movement of capital, and freedom to provide services within the Community. Migration-related provisions from The Draft Treaty on European Union signed in Brussels in December 1991 include free movement of persons, services and capital (Articles 48-73g).

64. Special rules apply for employment shorter than a year. For activities lasting fewer than three months, dependent workers are required only to have a passport or identity card and a statement from the employer. A temporary residence permit is also required for dependent employees working in a host country for less than one year but longer than three months. Independent workers - that is, intermediates in commerce, industry, and small craft enterprises - need no such statements or permits. For longer period, individuals are eligible for residency permits that are usually valid for a minimum of five years and are renewable.

65. It should be noted that while the initial EC treaty was quite generous in its formulation of the freedom of movement of individuals and workers, it has taken a long time for the Community to enforce that right. Successive Community court rulings, Council directives, and Community regulations have been required to further refine the definition of such freedom. Indeed, in the case of many professions, this took until the late 1980s.

2. The Common Nordic Labour Market (CNLM)

66. Current rules grant the right to be employed temporarily or permanently in a wage-earning capacity (meaning primarily "dependent" workers), without a labour permit or labour market test. Unlike other multicountry agreements which tend to grant more flexibility to independent workers than to dependent ones, the CNLM rules on independent workers are stricter. Individual countries reserve the right to apply different qualifications or limitations on managerial, self-employed, and professional workers. Only a limited group of medical professionals are free to provide services throughout the Nordic Market, either in an employed capacity or as independent practitioners. The Nordic Council is currently exploring the option of widening free movement to other medical professionals. Professionals associated with Nordic cooperation programs are typically granted freedom of temporary movement.

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[29] This section is based on "Working Party of the Trade Committee, Trade in Services, Note by the Secretariat, Information on Regulations Governing International Mobility of Suppliers of Services", (Paris: OECD/TD/88.377); see also, EFTA News 8/92 (September 1992).

3. The European Free Trade Association (EFTA)

67. The aim of the European Free Trade Association (EFTA) is to secure free trade in goods between member States through the elimination of duties and quotas and through the provision of a right of establishment for the purpose of management of economic enterprises, specifically, manufacturing or trading concerns. This right extends to short-term visits and temporary or permanent residency of entrepreneurs, managers, and workers who are "essential" to staffing such enterprises. The networks of bilateral agreements which exist between EFTA member States and neighbouring non-EFTA countries may explain why no attempt has been made to establish a comprehensive, common approach to movements of workers and other economic agents.

4. The European Economic Area (EEA)

68. On 2 May 1992, seven member States of the European Free Trade Association signed an agreement with the European Community, establishing the European Economic Area (EEA). The aim of the EEA Agreement is to establish not only free trade in goods but also free circulation for persons, capital and services, the so-called "four freedoms", within the area.

69. Part III of the Agreement deals with the free movement of persons, services and capital. The EEA provides for freedom of movement for workers, which entails the abolition of discrimination based on nationality between workers of EC member States and EFTA States as regards employment, remuneration and other conditions of work and employment (article 28, Chapter 1 on Workers and Self-employed Persons). This applies to all types of employment with the exception of certain job categories in the public sector.

70. Freedom of establishment is specifically mentioned in the Agreement. This means that nationals of any EEA country have the right to set up businesses, agencies, branches, etc., and to pursue activities as self-employed persons anywhere in the EEA.

71. The EEA Agreement guarantees the freedom to provide services on a non-discriminatory basis anywhere in the area. This includes the freedom to establish businesses in other countries and the freedom for professionals to pursue their trade outside their home country. The signatories have committed themselves to providing all EEA nationals with equal treatment. Craftsmen, professionals or other salaried workers of an industrial or commercial character, will have the right to pursue their work temporarily in the country where they provide services - and to do so under the same conditions as nationals of that country.

5. The North American Free Trade Agreement (NAFTA)

72. Although the provisions of the Chapter Sixteen of NAFTA, regarding "temporary entry for business persons", reflects the desirability of facilitating temporary entry on a reciprocal basis and of establishing transparent criteria and procedures for temporary entry, NAFTA does not create a common market for the movement of labour like the EC or the EEA. Each NAFTA country maintains its right to protect the permanent employment base of its domestic labour force, and to implement and enforce its own immigration policies.

73. The basic provision is that each country must grant temporary entry to business persons who are otherwise qualified for entry under applicable measures relating to public health, safety and national security. Temporary entry must be granted to business persons seeking to engage in one of the business activities set out in Schedule I, Chapter Sixteen of the Agreement, without having to obtain an employment authorization, provided that such persons otherwise comply with existing immigration measures applicable to temporary entry. Temporary entry may also be granted for engaging in activities not listed in Schedule I, if the persons fulfil the above conditions.

74. Each country will grant temporary entry to four categories of business persons:

(1) business visitors engaged in international business activities for the purpose of conducting activities related to research and design, growth, manufacture and production, marketing, sales, distribution, after-sales service and other general services;

(2) traders who carry on substantial trade in goods or services between their own country and the country they wish to enter, as well as investors seeking to invest a substantial amount of capital in that country, provided that such persons are employed or operate in a supervisory or executive capacity or one that involves essential skills;

(3) intra-company transferees employed by a company in a managerial or executive capacity or one that involves specialized knowledge and who are transferred within that company to another NAFTA country; and

(4) certain categories of professionals who meet minimum education requirements or who possess alternative credentials and who seek to engage in business activities at a professional level in that country.

75. Mexico and the United States have agreed to an annual limit of 5,500 Mexican professionals entering the United States. This number is in addition to those admitted under a similar category in U.S. law that is subject to a global limitation of 65,000 professionals, but which remains unaffected by NAFTA. The numerical limit of 5,500 may be increased by agreement between the United States and Mexico, and will expire 10 years after the Agreement goes into effect unless the two countries decide to remove the limit earlier. Canada has not set a numerical limit with respect to Mexico.

76. Chapter Sixteen also provides that the three countries will consult through a specialized working group on temporary entry matters. The group will consider providing temporary entry to spouses of business persons granted entry under NAFTA for periods of one year or more as traders and investors, intra-company transferees and professionals. As regards temporary entry for business persons, Chapter Sixteen of the NAFTA on "Temporary Entry for Business Persons" establishes the basic principles for temporary entry of business persons from another party in any of the four categories.

77. Under the transparency provisions of the Agreements, each country will publish clear explanations of procedures that business persons must follow to take advantage of the NAFTA temporary-entry provisions. The dispute settlement provisions of the Agreement may be invoked only if a country claims, on the basis of repeated practices, that another country has not complied with the temporary-entry provisions.

6. <u>Other Regional Arrangements</u>

78. The Economic Community of West African States (ECOWAS) was created by the Treaty of Lagos in 1975 for the promotion of cooperation and development in "all fields of economic activity". Chapter IV, on Freedom of Movement and Residence, introduces the free movement of citizens of member States within the Community. Article 27 calls on member States to abolish all obstacles to the freedom of movement and residence within the Community. The right of establishment is introduced in article 27.2. This mandate of the ECOWAS Treaty has been regulated in the Protocol Relating to Free Movement of Persons and the Right of Residence and Establishment, of June 1979. According to the Protocol, free movement means: "the right to accept offers of employment actually made or to move freely for this purpose within the territory of the member States, to stay there in order to carry on employment and to live there after having been employed". The Protocol grants the right of movement and residence without differentiating

between any sector of economic activity or workers category.[30]

79. The Treaty for the establishment of the Economic Community of Central African States provides that the citizens of member States shall be deemed citizens of the Community, and proposes a gradual streamlining of procedures for the freedom of movement and right of establishment within the community. The Protocol Relating to the Freedom of Movement and Right of Establishment of Nationals of Member States within the Economic Community of Central African States covers tourists, businessmen, workers and freelance professionals. The entry of businessmen is subject to their holding a certificate issued by the national chamber of commerce in each member State. Free movement of workers, subject to limitations on the grounds of public order, public safety and public health, includes the right to accept a job offered in a member State and to enjoy freedom of movement in the territories of member States for this purpose, to stay in the territories of the member States in order to work there in accordance with the laws and regulations governing nationals in such countries, and to remain in the territory after having finished a job, with a view to finding further work and becoming established there.

80. Within the ASEAN region, although there are no bilateral or regional agreements on migration for employment, its member States have agreed to visa-free, short-term, non-employment-related entry for ASEAN nationals. This arrangement has greatly encouraged regional tourism and business.[31]

81. Economic cooperation and integration among member countries of the Gulf Cooperation Council is embodied in the Unified Economic Agreement (UEA) of 8 June 1981, a comprehensive document which details the framework, mechanisms and principles of coordination, harmonization and integration of economic activity in the region. Chapter Two, article 8 of the Unified Economic Agreement includes four principles that constitute the basis for the liberalization and integration of services among member countries, among which are freedom of movement, work and residence.[32]

82. The Agreement on the Mobility of Labour within the Member Countries of the Council of Arab Economic Unity contains provisions on transparency, preferential treatment, and recognition of certificates and qualifications. The Agreement provides for countries to exchange at least once a year all data and information necessary for facilitating the mobility of labour among themselves, including information on working and living conditions, legal rules and admission procedures for work abroad, number of workers demanded by each country, and international commitments with respect to the mobility of labour. The member countries also agree to give priority to Arab workers and to permit them to transfer part of their salaries. The countries also agree to recognize the documents issued by authorized bodies as regards civil and legal status, together with the recognized scientific and professional qualifications.

83. The Treaty of 1973 that established the Caribbean Community and the Caribbean Common Market (CARICOM) presents a comprehensive treatment of services. Although the Treaty does not contain a clear mandate with respect to the free movement of capital and persons, the agreement introduces a limiting safeguard in the case of free movement of persons establishing that "nothing in this Treaty shall be construed as requiring or imposing any obligation on a member State to grant freedom of movement of persons into its territory whether or not such persons are nationals of other member States of the Common Market" (article 38).

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[30] Luis Abugattas, "Services as an element of co-operation and integration among developing countries: Implications for the Uruguay Round of Multilateral trade negotiations", in Trade in Services: Sectoral Issues, (UNCTAD/ITP/26), New York, 1989.

[31] See Pang Eng Fong and Linda Low, op. cit.

[32] See L. Abugattas, op. cit.

This leaves a wide discretionary margin to Member States with regard to the granting of free movement of persons in the context of possible services liberalization.[33]

84. The Central American Common Market (CACM) was established by the Treaty of Managua on 13 December 1960, involving Costa Rica, Guatemala, El Salvador, Honduras and Nicaragua. This Treaty contains two direct provisions on services. Chapter IV refers to "Transit and Transport" and article 15 grants the free transit of merchandise and transport units in the region. Furthermore, article 17 of Chapter VI grants national treatment to capital investment of nationals of other member States, and the right to organize and administer productive enterprises, financial or mercantile, or to participate in those concerns. Nevertheless, free movement of labour among member countries is not granted in the Treaty.[34]

85. The Cartagena Agreement does not include provisions on the free movement of persons among Andean countries. However, the Andean Group recently established a programme on integration in services aiming at creating a common intraregional market of services, including through the free movement of persons,[35] under which signatory countries will enter into negotiations to define the terms and conditions for the movement of persons.

86. The treaty establishing a Common Market between Argentina, Brazil, Paraguay and Uruguay (Mercosur), signed on 26 March 1991, involves the free movement of goods, services and factors of production between countries through, inter alia, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measure. Article 5(d) establishes that during the transition period one of the main instruments for implementing in place the common market shall be "the adoption of sectoral agreements in order to optimize the use and mobility of factors of production and to achieve efficient scales of operation".[36]

B. Bilateral Agreements

87. Some countries are parties to bilateral instruments or agreements that permit the free movement of workers from selected countries.

88. Bilateral agreements between the European Community and other European countries (in Central, Eastern and South-Eastern Europe, including the CIS and Georgia), and among Mediterranean-Basin countries guarantee work permits, for the purpose of temporary contract work, on the basis of contracts between an employer of the country concerned and a company in the EC member State concerned.

1. The Canada-US Free Trade Agreement (FTA)

89. The sections governing movement of persons in the Canada-United States FTA aim to facilitate the provision of services by establishing a commercial presence, authorization to practise, and mutual professional recognition. The agreement provides for liberalization rather than immediate full freedom of movement. It also authorizes temporary entry for four categories of persons: business visitors, traders and investors, professionals, and intra-company transferees. In the treaty, temporary entry means "without the intent to

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[33] Ibid.

[34] Ibid.

[35] Final Act of the Global meeting on services held in Lima, Peru, on 18-20 January 1993 established a programme of services integration.

[36] See "Argentina-Brazil-Paraguay-Uruguay: Treaty establishing a Common Market", in U.N. document A/46/155, April 19, 1991.

establish permanent residence". Under the FTA, Canada and the United States agreed not to introduce labour market tests, quotas, or like conditions to restrict entry, while simplifying visa application and issuance procedures. In addition, the two countries agreed to expand the definition of those that can be admitted under the business visitor and the professional status by means of two extended list of occupations qualifying under these two categories (Schedules 1 and 2 of Annex 1502.1 of the Treaty respectively). Occupations and professions enjoying special treatment are detailed in these two lists, with highly skilled dependent employees accorded some of the privileges normally allowed for independent workers only. Medical professionals are excluded from these rules, and may enter for purposes of research or teaching only.[17]

2. The Trans-Tasman System

90. Although there are no specific agreements on labour movements between Australia and New Zealand, under a 1973 agreement, Australia and New Zealand allow visa and permit-free entry of each other's nationals (employed or tourists). Under the 1988 protocol on trade in services, the Trans-Tasman travel agreement between Australia and New Zealand allows nationals of one country access to the other country's market on terms no less favourable than those granted to its own nationals. Service providers are free to establish a commercial presence in the other market and to select their preferred form of presence. Service providers must comply with the host country's foreign investment policy with respect to foreign investment.

91. Labour-mobility-related bilateral agreements include the agreement between the United States and China on Cooperation in Science and Technology, which provides for the exchange of scientists, scholars, specialists and students, specifying inter alia that each country will put forth its best efforts to facilitate the prompt entry and exit of equipment and personnel. There is also the Agreement between the United States and Nigeria for the training of Nigerian technical educators, and an agreement establishing a binational commission between US and Morocco for Educational and Cultural Exchange. Specific laws deal with the employment of foreign seamen on national flag vessels. Most developed countries stipulate that key personnel must be nationals, but have no statutory requirements relating to the nationality of other crew members. Developing countries in general require their vessels to be manned entirely by nationals if available, though in some cases they are subject to qualifications.[18]

C. International Provisions, Types of Concessions

92. The movement of persons has also been addressed in the negotiations of a multilateral framework for trade in services in the context of the Uruguay Round. The draft General Agreement on Trade in Services (GATS) defines "trade in services" as including the "supply of services by natural persons of one party in the territory of another party". Thus commitments with respect to the movement of persons can be negotiated on a horizontal, sectoral or sub-sectoral basis. The "Annex on Movement of Natural Persons Supplying Services under the Agreement" defines the scope of the Agreement (i.e., that it does not apply to measures affecting natural persons seeking access to the employment market of a member nor to measures regarding citizenship, residence or employment on a permanent basis), and provides guidance for the negotiation of specific commitments. The inclusion of GATS in the Uruguay Round Protocol would thus establish such concessions with respect to the movement of persons as a part of the overall balance of trade rights and obligations rather than exclusively as a matter of immigration laws.

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[17] See "Processes of Recognition and Harmonization of Qualifications" UNCTAD/SDD/SER/2.

[18] See UNCTAD, "Conditions for Registration of Ships", Report by the UNCTAD secretariat, TD/B/AC.34/2, 22 January 1982.

93. However, in the context of the Group of Negotiations on Services (GNS), the conditional offers which have been made to date generally cover a small proportion of the visa categories dealing with the temporary entry of persons to supply services. Most countries which have made offers with respect to this "mode", particularly the major trading nations, have made horizontal offers usually covering intra-corporate transferees in the executive, managerial and specialist categories as well as business sales representatives. The fact that sectors or occupational categories are not indicated renders it difficult for any country to assess the value of the offer from the point of view of export opportunities.

94. The multilateral draft GATS offers a number of general opportunities to increase services-related production and trade for all contracting parties. It also contains a number of concepts, principles and rules dealing specifically with developing countries. Article IV entitled "Increasing Participation of Developing Countries" constitutes a recognition in the framework of the basic "asymmetry" in the situation of services in developed and developing countries and a commitment that developed countries would take concrete measures aimed at facilitating the increased participation of developing countries in world trade in services through negotiated specific commitments relating to inter alia, the liberalization of market access in sectors and modes of supply of export interest to them."[39]

IV. CONCLUSIONS AND RECOMMENDATIONS

95. A major impediment to the realization of the competitive potential of developing countries in labour-intensive services has been the barriers to the temporary movement of persons arising from immigration laws and regulations. For that reason, the draft GATS emerging from the Uruguay Round, which recognizes that the movement of "natural persons" to provide services into another country constitutes "trade" in services and that the conditions of access of such persons is a legitimate subject for the negotiation of trade concessions, should assist developing countries in increasing their participation in world services trade.

96. As noted above, the temporary movement of personnel across national borders is both significant and increasing in volume as a result of the growing globalization of markets, although the number of persons resident outside their home countries is still small in absolute and relative terms.[40] The impetus of growth in temporary movements of personnel has not been limited to personnel associated with service exporting firms, or exporting labour-services firms, but also stems from manufacturing exporters and investors needing to staff foreign operations with their own personnel and to maintain goods exported. Despite high unemployment levels, many developed countries are facing shortages of skilled labour in labour-intensive services. Consequently, although their immigration policies are tightening, these countries have an interest in attracting highly-skilled persons from developing countries. The developing countries, on the other hand, cannot afford to lose such assets. This suggests that developed countries and developing countries could have a mutual interest in arriving at more efficient arrangements which would provide the latter with the possibility of increasing their share of world trade in services, without increasing pressures for immigration while mitigating "brain drain".

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[39] See Trade Negotiations Committee, "Draft Final Act Embodying the Results of the Uruguay Round" (MTN.TNC/W/FA), 20 December 1991.

[40] See "Special Report on Jobs", *Newsweek*, 14 June 1993.

A. Policies at the National Level

97. Complementary policy measures at the national level may be called for if developing countries are to benefit from existing access for labour-intensive services or improved access to be negotiated within the framework of GATS or of subregional agreements. Many developing countries already have considerable experience in exporting labour-intensive services, in such areas as construction, engineering consultancy, maintenance, security, shipping, cleaning, education, and computer-related services. Specialized expertise related to manufacturing or natural resource extraction might also be "externalized" and organized in labour-intensive enterprises. This expertise could be examined more closely both in terms of the past experience of individual firms in export markets - to assess strengths and weaknesses and the specific problems encountered in terms of market access, national treatment, restrictive business practices, and so on - and in terms of the effectiveness (or lack thereof) of previous national policies for promoting the growth of some of these firms. This would assist developing countries in facilitating the penetration of export markets, accumulating expertise and technology, and maximizing profits and foreign-exchange income from the exporting country. A major study of successful experiences as well as possible new approaches within the context of the post-Uruguay Round framework would seem desirable. In addition, specific examples to illustrate problems encountered in the context of the export of specific services could be pointed out to the Committee.

98. For exporting countries, several considerations militate in favour of organizing the movement of their personnel abroad within an enterprise structure, aimed at providing a package of services. First, such exports can be structured not only in terms of unskilled labour but also of the managerial know-how and technical expertise that goes along with the service so as to provide a system from which the value added is much higher than the mere wages and salaries earned by guest workers. Particular opportunities for technology transfer could be facilited since firms and individuals could accumulate experience and expertise and obtain knowledge and techniques from working in collaboration with firms from developed countries that possess superior technologies.[41] Such advantages can be furthered by strategies that seek to upgrade skills and expertise through exposing personnel to increasingly challenging situations and rotating individuals so as to broaden the overall knowledge base. Such an approach would enable developing countries to continually increase their competitiveness in the export of services and develop the ability to participate in multinational projects assembled anywhere in the world.

99. Importing countries also have an interest in more efficient arrangements for trade in services through temporary labour movement. Labour-deficient countries that have used large guest-worker programmes over the years have subsequently encountered difficulties in absorbing the sizeable share of temporary guest workers who have stayed on as permanent immigrants. More structured trade in labour-intensive services would make it easier to limit the stay of temporary labour (for example, for the duration of the project in question) linking it to the provision of clearly defined skills. At the same time, greater security of access would be afforded to the exporting country while reducing the motivations for permanent immigration. Such trade would provide more flexibility from the point of view of importing countries as the movement of persons would respond much more readily to the vagaries of market demands. This would also require concessions with respect to commercial presence and national treatment, in that foreign firms in some countries are precluded from importing foreign workers.

100. In formulating policies with respect to the promotion of labour-intensive service firms and the development of export markets for them, countries that are

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[41] Software industries in some Asian countries have been successful in moving into the higher end of the industry through acquiring experiences in developed countries. See Thierry Noyelle, op. cit.

traditional exporters of labour might review conventional labour export schemes as promoted through bilateral agreements, as well as the promotion that has taken place in an unorganized fashion. It would also be useful for more developing countries to emulate those which have prepared inventories of the occupations of their nationals working abroad in order to identify areas of "comparative advantage".

101. Advances in telecommunications and information technology have opened up new possibilities for the export of labour-intensive services without the movement of persons. Much anecdotal information exists with respect to the exports of data entry, data processing, software and other "back-office" services by developing countries. There is very little information as to the actual and potential size of this trade and the type of economic and infrastructural policies which would provide elements for an export-strategy in this area. The Committee might wish to address this issue under item 3 (c) of its Work Programme, dealing with access to information networks.

B. Policies at the Regional Level

102. For many countries, the greatest export opportunities for labour services may exist in the context of regional markets that already fall under regional integration arrangements. Regional and preferential arrangements among developing countries have dealt with trade in services to different degrees, including the temporary movement of persons, some including rather liberal provisions in this respect. In the light of the lessons that may have been gained from the GATS negotiations, it would be useful to review some of these arrangements and identify the extent to which services have been effectively incorporated, so as to provide guidance in the possible extension of the arrangements to cover this mode of delivery by drawing upon the experience of the Uruguay Round negotiations. In this context it should be noted that Article V of the Draft GATS provides for the preferential liberalization of services within economic integration agreements, providing there is substantial sectoral coverage, that no mode of supply is a priori excluded (i.e., there must be provisions for the temporary movement of persons), and that national treatment is generally provided. Developing countries enjoy a degree of flexibility with respect to these criteria.

103. It therefore would be useful for countries that are members of integration agreements to identify sectors and sub-sectors in which there could be further liberalization of the temporary movement of persons. Item 3(j) of the Work Programme of the Standing Committee requests that it identify and analyse policies aimed at the promotion of regional, sub-regional and inter-regional cooperation on services, including among countries at different levels of development. Accordingly, submissions could be made by the secretariat or member States of such agreements with respect to their experience in the implementation of provisions governing the temporary movement of services suppliers.

C. Policies at the International Level

104. The Uruguay Round should result in new opportunities for exports of labour-intensive services from developing countries, provided that: (a) the concessions negotiated within the framework of the GATS provide access for natural persons in sectors of interest to developing countries, which in turn will, inter alia, reflect the ability of developing countries to formulate and effectively pursue requests to this effect, and (b) developing countries acquire the necessary means for promoting such exports in order to take advantage of market access opportunities through all modes of delivery. The inclusion of specific sectoral and occupational categories (in addition to "horizontal categories") in the Schedules of Commitments of the GATS should be a matter of priority. This would ensure that any tightening of immigration laws and regulations, provoked largely by high rates of permanent immigration and pressures of illegal migration, will not act as a barrier to trade in services

through the temporary movement of persons.

105. Upon conclusion of the Uruguay Round, the Standing Committee could review the commitments with respect to the temporary movements of persons with a view to identifying trade opportunities for developing countries.

106. It would also be useful to conduct a systematic analysis of immigration laws to identify their sectoral specificity. This could help developing countries to identify possible opportunities for expanding trade and facilitate the preparations of requests in negotiations within the framework of the General Agreement on Trade in Services. The proposal of the database on measures affecting service trade (TD/B/CN.4/26) will attempt to identify the sectoral and occupational aspects of immigrations laws.